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Convention on the Rights of the Child

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Committee on the Rights of the Child

# Consideration of reports submitted by States parties under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

## Reports of States parties due in 2011

## Netherlands*

[30 December 2011]

* The present document is being issued without formal editing.

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## Introduction

1. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (New York, 25 May 2000) was approved for the entire Kingdom of the Netherlands by the Kingdom Act of 18 December 2008[1] and entered into force for the entire Kingdom on 24 October 2009. The Dutch translation of the Protocol was published in the Dutch Treaty Series 2001, 131.

2. At the time of the ratification the Kingdom of the Netherlands consisted of the Netherlands, the Netherlands Antilles and Aruba.

3. In 2010, the Kingdom of the Netherlands has undergone a process of constitutional reform, which has now reached fruition. The changes concern the Netherlands Antilles, a country that until recently was made up of the islands of Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba. The reforms are based on the results of referenda and on decisions taken by representative assemblies about the islands' future status. The amended Charter for the Kingdom of the Netherlands entered into force on 10 October 2010, on which date the Netherlands Antilles ceased to exist.

4. In the new constitutional structure, Curaçao and Sint Maarten have acquired the status of countries within the Kingdom (like the Netherlands Antilles and Aruba before the changes). Aruba retains the separate country status it has had since 1986. Thus, from 10 October 2010 the Kingdom consists of four, rather than three, equal countries: the Netherlands, Aruba, Curaçao and Sint Maarten. Aruba, Curaçao and Sint Maarten are not Dutch overseas dependencies, but full, autonomous partners within the Kingdom, alongside the Netherlands, and each enjoys a high degree of internal autonomy.

5. The three other islands, Bonaire, Sint Eustatius and Saba, have voted for direct ties with the Netherlands and are now part of the Netherlands, thus constituting 'the Netherlands in the Caribbean'. The relationship's legal form will be that each island has the status of public body within the meaning of article 134 of the Dutch Constitution. In broad terms, their position resembles that of Dutch municipalities, with adjustments for their small size, their distance from the Netherlands and their geographic location in the Caribbean region. For the time being, Antillean legislation will still be applicable in large part to the public bodies.

### Responsibility for foreign relations

6. The constitutional changes do not affect the way in which the Kingdom conducts its foreign relations. The Kingdom's external borders have not changed. Foreign relations and defence remain 'Kingdom affairs'. There is one Minister of Foreign Affairs, who has ultimate responsibility for foreign relations for the Kingdom as a whole. While treaties and conventions may be concluded only by the Kingdom and not by its constituent parts, their applicability may be confined to one or more countries. In other words, such agreements may be concluded by the Kingdom for one or more individual parts of the Kingdom.

7. The abovementioned changes constitute a modification of the internal constitutional relations within the Kingdom of the Netherlands. The Kingdom of the Netherlands will

[1] Bulletin of Acts and Decrees 2009, 42. For an account of the proceedings in the States General see Parliamentary Papers II 2004/2005, 2005/2006, 2007/2008, 29976 (R1780), nos. 1-16; Proceedings II 2007/2008, 29976 (R1780), pp. 4383-4400, 4763-4770 and 5107; Parliamentary Papers I 2007/2008, 2008/2009, 29976 (R1780), nos. A-F; Proceedings I 2008/2009, 29976 (R1780), p. 750.

accordingly remain the subject of international law with which agreements are concluded. The modification of the structure of the Kingdom will therefore not affect the validity of the international agreements ratified by the Kingdom of the Netherlands on behalf of the Netherlands Antilles; as these agreements will continue to apply for Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba. These changes within the Kingdom of the Netherlands do not therefore change how the Kingdom is bound by the Optional Protocol.

# I. General implementation measures

8. This report describes the measures taken by the respective governments of the Kingdom of the Netherlands to implement the Protocol rights adopted by the Kingdom, plus the progress made in enforcing these rights since the Convention took effect. Difficulties affecting implementation are also discussed.

## The Netherlands

9. In the Netherlands, this report has been prepared under the responsibility of the Minister of Foreign Affairs by an official working group headed by representatives of the Ministry of Defence as the ministry most directly concerned, and with the assistance of the Ministry of Security and Justice and the Ministry of Health, Welfare and Sport as well as input from the Minister for Immigration and Asylum Policy. The draft of this report was discussed in a meeting on 29 September 2011, which was attended by representatives of not only the Ministry of Foreign Affairs, the Ministry of Health, Welfare and Sport and the Ministry of Defence but also a number of non-governmental organisations. These were: Defence for Children, UNICEF, War Child, and Plan Nederland. Their comments, findings and recommendations have been incorporated in this report.

10. The Kingdom Act approving the Optional Protocol for the Kingdom also contained provisions for its implementation. These amended the Military Personnel Act 1931 to introduce the age of 18 as the minimum age for joining the armed forces. The main way in which the Optional Protocol has been implemented in the Netherlands is through provision in the Act of Approval for a simultaneous change to the Military Personnel Act 1931.[2] As a result of this amendment, 18 is now the minimum age for joining the armed forces. People who have reached the age of 17 may be recruited as trainees. This will be explained at length in this report.

11. Since in 1997 the duty to report for national service has been suspended and the Dutch armed forces have consisted solely of volunteers. Until 2009 the Military Personnel Act did not provide for a formal minimum recruitment age, although in practice this was set at 17. This was because the main target group for recruitment to the armed forces in the Netherlands consists of young people who have just completed their schooling. Often they cease full-time education in the year before they reach the age of 17. If these young people were to have to wait until they reach the age of 18 before being able to start training for a military career they might well decide in the meantime to embark on a different career and thus no longer be available for the armed forces.

12. After lengthy discussions in parliament it was therefore decided to introduce the possibility of enlistment as a military trainee at the age of 17, albeit subject to the conditions specified in article 3 (3) of the Optional Protocol.

[2] Bulletin of Acts and Decrees 2009, 42; Parliamentary Papers 29 976.

13. Upon ratification of the Protocol the Kingdom of the Netherlands made the following binding declaration:

> 'On the occasion of the deposit of the instrument of ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (New York, 25 May 2000) by the Kingdom of the Netherlands, and in accordance with Article 3, paragraph 2, of the Protocol, the Government of the Kingdom of the Netherlands declares that the minimum age at which the legislation in the Netherlands permits voluntary recruitment into its national Armed Forces for both soldiers and commissioned or non-commissioned officers, remains eighteen years. However, persons that have reached the age of seventeen years, may on a strictly voluntary basis be recruited as military personnel in probation.
>
> The relevant legislation in the Netherlands provides the following safeguards to ensure that such recruitment of persons under the age of eighteen years is not forced or coerced:
>
> 1. Appointment of such persons under the age of 18 years as a member of the armed forces in probation is only permitted with written consent of the parents of this person.
>
> 2. When the age of eighteen years has been reached, the member of the armed forces on probation can only become a regular soldier after having given written consent to this effect.
>
> Moreover, the Law on Military Personnel 1931 ensures that a person under the age of eighteen years will not participate in an armed conflict, providing in particular that members of the armed forces on probation will not be tasked with peacekeeping or humanitarian missions, or any other form of armed service.
>
> The above does not apply to the Netherlands Antilles and Aruba. The relevant legislation in the Netherlands Antilles and in Aruba sets the minimum age for joining the military service and other armed forces at 18 years. Furthermore, voluntary recruitment does not exist in the Netherlands Antilles [and] Aruba.'

14. A new section – section 1a – was therefore added to the Military Personnel Act 1931. This provides that:

- Only persons who have reached the age of 18 may be enlisted as members of the armed forces;
- Those who have reached the age of 17 may be enlisted as military trainees ("aspirant militaire ambtenaren") with the written consent of their legal representatives;
- Military trainees are not assigned a station or task in the armed forces;
- They are not deployed in wartime or other exceptional circumstances, nor for peacekeeping or humanitarian operations or for any form of armed service;
- The entire period of enlistment as a military trainee forms part of the probationary period for enlistment as a member of the armed forces;
- Enlistment as a military trainee leads on to enlistment as a member of the armed forces only if the trainee consents in writing on reaching the age of 18.

15. It follows that in practice people under the age of 18 are not members of the armed services. Military trainees must be at least 17 years old and their service consists entirely of training. The written consent of a parent or legal guardian is necessary for enlistment as a

military trainee. The age of the person concerned is verified by reference to a Dutch passport or other proof of identity as applicants must have Dutch nationality. In addition to an extensive physical and psychological examination, they must undergo a selection process. Apart from this selection they must also submit to a vetting procedure as referred to in the Security Screening Act,[3] which is designed to assess by reference to criminal justice data and court records whether there are sufficient guarantees that the applicants will faithfully discharge their confidential military duties in all circumstances. Only then will a 'declaration of no objection' be issued, without which no enlistment is possible.

16. During his trainee-ship a military trainee is supervised by an experienced non-commissioned officer. Trainees may obtain an immediate discharge from the training if they find that service life is different from what they had envisaged. Their time in training until they reach their 18th birthday counts as a probationary period. In this period they are not available for deployment or armed service. Only during practice on a shooting range do they use live ammunition. Once military trainees have completed their training, they are not assigned to a station or task until they have reached the age of 18 years. But before being enlisted as a member of the armed forces the trainee upon reaching the age of 18-years must give written consent thereto.

17. In the opinion of the Kingdom of the Netherlands the system described above complies with the obligations of the Optional Protocol. The Kingdom therefore sees no reason to change the system and has no plans to do so. 899 people aged 17 were enlisted as military trainees in 2009 and 513 in 2010. The figure for 2011, up to 31 August, was 138. The following table provides a breakdown by sex and by branch of the armed services. It should be emphasised that no military trainees have been posted on any peacekeeping or humanitarian mission in which the Dutch armed forces have taken part.

| | *Royal NL Army* | | *Royal NL Air Force* | | *Royal NL Navy* | | *Royal NL Constabulary* | | *Total* | |
|---|---|---|---|---|---|---|---|---|---|---|
| | *M* | *F* | *M* | *F* | *M* | *F* | *M* | *F* | *M* | *F* |
| 2009 | 444 | 62 | 20 | 6 | 263 | 34 | 55 | 15 | 782 | 117 |
| 2010 | 274 | 44 | 18 | 1 | 109 | 11 | 43 | 13 | 444 | 69 |
| 2011* | 79 | 6 | 4 | 1 | 26 | 5 | 15 | 2 | 124 | 14 |
| **Total** | **797** | **112** | **42** | **8** | **398** | **50** | **113** | **30** | **1,350** | **200** |

* Until 31 August 2011.

**View of NGOs**

18. The NGOs that were consulted take the view that – regardless of whether or not the Dutch system of military trainees comes within the framework of the Optional Protocol – it sends out a signal that it is possible in the Netherlands for people under the age of 18 to form part of the military system. This may provide a possible excuse to armed groups that recruit child soldiers. If brought before a criminal court they could, after all, argue that they were not the only ones to admit people under the age of 18 into their organisation and could emphasise that the difference between a 17-year-old military trainee from the Netherlands and a 17-year-old child soldier is not absolute but at most a matter of degree. In the opinion of the NGOs, the Netherlands is therefore exposing itself to international criticism and should reconsider the need to recruit military trainees.

[3] Bulletin of Acts and Decrees 1996, 525, Parliamentary Papers 24023.

## Overseas parts of the Kingdom

19. As explained above, the Kingdom consists of the Netherlands and the countries of Aruba, Curaçao and Sint Maarten. As article 3 of the Charter for the Kingdom[4] provides that maintenance of the independence and the defence of the Kingdom are 'Kingdom affairs', the armed forces of the Netherlands serve as the armed forces for the Kingdom. Aruba and Curaçao also have their own conscript militia corps for which there is no voluntary recruitment and for which the minimum age is 18 years. Sint Maarten does not have an independent armed force of its own and there are no existing plans to initiate a change to this effect. Sint Maarten expects to start in the year 2012 with bringing the legislation concerning conscription (which, as in The Netherlands has been suspended) up to date according to the example of The Netherlands.

## Aruba

20. The substance of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict is in fact already present in Aruban legislation. The following should make this clear.

21. Aruba has no army or armed forces of its own, but the Kingdom of the Netherlands does. Under article 3 of the Charter for the Kingdom of the Netherlands, the maintenance of the sovereignty and the defence of the Kingdom, of which Aruba is a part, are Kingdom affairs. It is therefore the government of the Kingdom that declares a state of war or a state of emergency (article 34, paragraph 1 of the Charter).

22. Accordingly, article 30, paragraph 2 of the Charter requires that provisions be laid down by country ordinance in Aruba to ensure that the armed forces of the Kingdom stationed there can discharge their task. The Charter also provides (article 31, paragraph 1) that persons resident in Aruba may be compelled to serve in the armed forces only by country ordinance, and that (article 32) the armed forces for the defence of Aruba must consist as far as possible of persons who are resident there.

23. These principles have been incorporated into Aruba's Constitution (Official Bulletin 1987 no. GT 1). Under article V.27 of the Constitution, persons resident in Aruba may be ordered to serve in the armed forces only by country ordinance, and they may be sent abroad without their consent only by country ordinance. In exceptional circumstances (article V.28) the government may decide that persons resident in Aruba who are eligible for compulsory military service may be called up for active duty.

24. The mandates given by the Charter of the Kingdom of the Netherlands and the Constitution of Aruba are reflected in Aruba's Country Ordinance on Compulsory Military Service ('DV'; Official Bulletin 1994 no. GT 9), which lays down rules for Aruban nationals' obligation to serve in the armed forces.

25. The DV establishes universal compulsory military service for persons aged 18 and over. There is no compulsory military service for persons under 18. Compulsory military service also applies exclusively to men (DV article 1, paragraph 2).

26. Notwithstanding the provisions of the DV and the statutory universal obligation for military service, compulsory military service does not exist in reality. A political decision was made in 1997 for economic reasons to suspend the implementation of the DV. Nobody in Aruba is actually called up for service in the armed forces.

[4] Bulletin of Acts and Orders 2010, 775.

27. In legal terms: under DV article 25, calling up eligible persons for military service for active duty takes place in principle through a country decree to be promulgated each year by the government. Due to the political decision mentioned earlier, however, this national decree is in fact never promulgated. Consequently the DV is not implemented; no one is actually called up for military service. As mentioned earlier, compulsory military service is constantly suspended.

### 1. Voluntary service

28. Compulsory military service thus does not in fact exist in Aruba. There is however limited scope for voluntary service: young men may voluntarily enlist in the only body established for military ends, the Aruban militia (Arumil). Formally, Arumil is part of the Royal Netherlands Navy, the only branch of the Kingdom's armed forces present in Aruba. The militia is made up of Arubans with the legal status of public servants who have been placed at Arumil's disposal by the Country of Aruba. The DV's provisions on the legal status of persons doing military service are applicable mutatis mutandis to Arumil personnel. As the minimum age for public servants is 18, a person has to be this age to serve in Arumil.

### 2. Armed groups

29. Aruba is a democratic country, where the state has the monopoly on the use of force and the creation of private armed forces is not permitted. There are no 'private military and security companies' in Aruba; their establishment, and membership of them, is forbidden by the Country Ordinance on Private Militias (Official Bulletin 1999 no. GT 4). The Country Ordinance defines a private militia as 'any organisation of private individuals designed or preparing to engage or participate in concert in acts that are properly the task of the armed forces or police in maintaining external and internal security, public order and peace'. The ordinance allows in principle for exceptions, but only for organisations that are explicitly permitted by a country decree containing general provisions; and no such decree has ever been promulgated. The country decree on private militias (Official Bulletin 1999 no. GT 5) imposes a large number of preconditions for such exceptional cases, notably their subordination to the lawful authorities.

## Curaçao

30. The initial report on OPAC of Curaçao was drafted and coordinated by the Directorate of Foreign Relations, with the assistance of the Ministry of Justice and the Curaçao Volunteer Defence Force. Overall responsibility rested with the Minister of General Affairs.

31. Given article 3 of the Charter for the Kingdom of the Netherlands[5] the Dutch armed forces function as the armed forces of the Kingdom as a whole. In addition, Curaçao has a conscript militia, for which no volunteers are recruited and which has a minimum age limit of 18 years.

32. When the Kingdom of the Netherlands ratified OPAC the legislation required to implement the conscript militia for Curaçao was already in place and needed no amendment. Nor was it necessary for the Kingdom to deposit a declaration upon ratification for Curaçao in accordance with article 3, paragraph 2 of OPAC, since the statutory

[5] *Idem.*

minimum age for being registered for military service in Curaçao had already been set at 18 years. Accordingly, the declaration deposited by the Kingdom does not apply to Curaçao.

33. The basis for implementing OPAC in Curaçao is the Country Ordinance of 20 December 1961 regulating compulsory military service ('Compulsory Military Service Ordinance 1961'),[6] under which a person may not be registered for military service until their 18th birthday.[7]

### Instruction in international humanitarian law in the armed forces

34. The Netherlands attaches great importance to the implementation of international humanitarian law (IHL) in situations of armed conflict. In this respect, the training of armed forces and other professionals dealing with armed conflict is crucial in ensuring compliance with IHL. In the Netherlands, IHL is not only part of the regular curriculum of the armed forces, but also part of mission-specific pre-deployment training at all levels. The greater the responsibilities of military personnel the more instruction they receive in IHL. Specific instruction about the rights of children is part of the standard curriculum for both officers and non-commissioned officers.

### Netherlands Institute for Human Rights

35. On 30 August 2010 a bill was introduced in parliament for the establishment of a national human rights institution (the Netherlands Institute for Human Rights).[8] In 2011, this legislation was approved by both chambers of the Dutch parliament. As a result, the Institute should open its doors in 2012. The function of the Institute will be to protect human rights in the Netherlands, to increase awareness of these rights and to promote their observance.

## II. Prevention

### Articles 1, 2 and 4, paragraph 2, and article 6, paragraph 2

#### 1. Conscription

**The Netherlands**

36. The position in the Netherlands is that although conscription has not been abolished the duty to report for national service has been suspended. The Compulsory Military Service Framework Act[9] provides[10] that males of Dutch nationality should be registered for national service on 1 February of the year in which they reach the age of 17. This is a purely administrative procedure, performed by the authorities of the municipality in which the person concerned is registered – or should have been registered – in the municipal personal records database.[11] The Minister of Defence sends every person registered in this

[6] Country Ordinance of 20 December 1961 regulating compulsory military service, Official Bulletin 1961, no. 223.
[7] Article 8, Compulsory Military Service Ordinance 1961.
[8] Parliamentary Papers II 2009-2010, 32467, no. 1.
[9] Act of 13 March 1997, Bulletin of Acts and Decrees 197, 139.
[10] Section 3.
[11] Section 4.

way a notice of registration together with a registration number.[12] However, persons receiving such a notice are thereby neither conscripts nor members of the armed forces. The rest of the enlistment procedure was suspended when the Act entered into force.[13] It follows that there is no medical examination and the persons concerned are also not designated as liable for compulsory military service and cannot therefore be called up for active service. The suspension of the duty to report for service etc. can be revoked by Royal Decree on the recommendation of the prime minister.[14] Such a decree must be submitted to both houses of the States General and would not enter into force until two weeks later. If one of the houses has insuperable objections, the decree must be withdrawn.

37. Although the likelihood of such an event is at present remote, if suspension of the duty to report for military service were to be revoked those registered as having a duty to report could be called up for a medical examination. At the examination they would have to produce both the notice to report and a document as referred to in section 1 of the Compulsory Identification Act.[15] It should be noted that even if the duty to report were to be reactivated, in 'ordinary circumstances' (i.e. in peacetime) a registered person could be called up only for service consisting of training and exercises and for refresher training.[16] Only in exceptional circumstances could registered persons be called up to perform the duties of the armed forces. However, this would require a special procedure that would include the presentation and adoption of a bill to the House of Representatives of the States General.[17] Even then no conscript under the age of 18 would be called up for active military service.

38. It follows that in practice no one under the age of 18 can be a member of the armed services in a military capacity. Military trainees must be at least 17 years old and their service consists entirely of training. The written consent of the legal representatives is necessary in order to be taken on as a military trainee. The age of the person concerned is checked by reference to a Dutch passport or other proof of identity as applicants must have Dutch nationality.

39. It should be noted in respect of article 3, paragraph 5 of the Optional Protocol that there are no schools operated by or under the control of the armed forces in the Kingdom. However, there is a vocational 'peace and security' course in the Netherlands for people seeking jobs in this sector. School leavers who obtain this certificate are qualified to apply to join the police, the armed forces or private security firms. The course is for students at civilian institutions (Regional Training Centres (ROC)) who by completing the course obtain a certificate recognised by civilian organisations; they do the practical training that forms a mandatory part of the course in parts of the Defence-organization rather than at a civilian firm. The students are generally required to undergo an external sport medical examination before being able to join the ROC course. The purpose of this examination is to assess whether they are able to safely complete the physical part of the training at the ROC. The results are not communicated to the Ministry of Defence, but students must pass the examination in order to join the ROC course.

40. The Ministry of Defence does not enlist these students, but merely arranges work placements that enable them to put into practice what they have learned. However, in a few cases security screening may be necessary because of the nature of the location where the

[12] Section 5.
[13] Section 71, subsection 3.
[14] Section 40.
[15] Bulletin of Acts and Decrees 1993, 660.
[16] Section 18.
[17] Section 20.

students are to do their practical training. As they spend time at a Defence location and are taught by military instructors at the ROCs students are familiarised with the military world and culture and acquire a number of basic military skills (sports proficiency, physical fitness, map reading etc). The aim is to ensure that it remains possible in the future (in view of demographic trends) to recruit sufficient personnel and also to shorten the length of internal training in the Defence organisation. However, students are not allowed to carry or service weapons and may not be deployed during military operations (including deployments). Once the students are on the point of obtaining their certificate and provided they meet the other requirements (age, nationality, etc) they are given the opportunity to apply to the armed forces. This is a voluntary choice and the (modified) examination and selection procedure starts only after they submit a formal application.

**Aruba**

41. In Aruba, the Marine Training and Education Scheme (MVO; compulsory social training) is aimed at young people between the ages of 18 and 24 who are not receiving disability benefit, do not have a job, do not have a certificate from an educational institution as referred to in article 3 of the Country Ordinance on Secondary Education (Official Bulletin 1989 no. GT 103) and are no longer enrolled in an educational programme. The MVO is intended as a tool to offer its target group genuine prospects of a better future. It begins with a four-month course focusing on discipline, good manners, morals, values and physical education, followed by an eight-month training course. The commanding officer of the Compound of the Royal Netherlands Navy is in charge of the content and organisation of the programme, whose activities take place at or from its base at the Savaneta barracks. The scheme is definitely not meant to train participants to be military personnel. Its quasi-military approach is simply a means of reaching its objective: improving opportunities for the young adults enrolled in it so as to give them a proper place in Aruban society.

**Curaçao**

42. Under article 94, paragraph 1 of the Constitution of Curaçao, residents of Curaçao may only be ordered to serve in the armed forces or to perform civilian service pursuant to a country ordinance. The government of Curaçao should avail itself of the powers conferred upon it by this provision only for matters in respect of which Curaçao has autonomous powers. The Netherlands Antilles and Aruba Defence Act also states that rules governing the legal status of conscripts in, for example, Curaçao must be laid down by country ordinance.[18]

43. This is provided for by the Compulsory Military Service Ordinance 1961, which also implements articles 1 and 2 of OPAC, to the effect that persons under the age of 18 years may not take part in hostilities and may not be recruited into the armed forces. The minimum age for registration for military service is laid down by law, and no exceptions to or departures from the age rule are possible. Everyone who is registered is liable for military service, with the exception of those who by law are not liable for compulsory military service or are exempt or excluded from compulsory military service or who are not liable for compulsory military service pursuant to an international agreement which applies to Curaçao.

44. Conscripts are divided into external and internal conscripts. The former are those who were called up for basic training and completed it not in Curaçao but elsewhere in the

[18] Netherlands Antilles and Aruba Defence Act, Official Bulletin 1992, no. 109. The Act has now been adopted by Curaçao.

Kingdom. Internal conscripts are those who can be called up for basic training in Curaçao or who are deemed to have done their basic training there.

45. The following are registered for compulsory military service:[19]

(a) Any Dutch national who, between his 18th and 45th birthdays, is or should be entered in the population register in his place of residence;

(b) Any Dutch national who settles in Curaçao between the ages of 18 and 45 and is or should be entered in the population register in his place of residence;

(c) Anyone who acquires or re-acquires Dutch nationality between the ages of 18 and 45 and is or should be entered in the population register in his place of residence.

46. Every year in the month of January the population register supplies the Minister of General Affairs with a list containing the name, date and place of birth, and occupation of everyone who has been registered for compulsory military service over the past year and of those whose names have been removed from the register.

47. Pursuant to the Compulsory Military Service Decree I,[20] the Governor-General of Curaçao determines how many conscripts in each year's levy will actually be called up for military service. The order in which they are called up is determined by a draw which is done in public each February by a committee of three persons chosen by and from the Compulsory Military Service Board.[21]

48. Suitability for military service in relation to height, illness or impairment is assessed by a medical examination committee comprising three medical practitioners, assembled by the Minister of General Affairs, with the addition if possible of a military doctor. On the basis of the medical examination, it is decided whether an individual is eligible to be called up to perform military service. The medical examination is conducted on the basis of regulations laid down by country decree on the recommendation of the Minister of Health, Environment and Nature. These statutory regulations – the Military Medical Examination Regulations 1995 – apply the system used for the military as far as possible.[22]

49. The Compulsory Military Service Ordinance 1961 states that exemption from military service may be granted on an optional or an obligatory basis. The Minister of General Affairs decides whether to grant exemption.[23] Exemption may be granted on the following grounds:

(a) Breadwinner status;

(b) Personal indispensability;

(c) The existence of special circumstances;

(d) Or if the individual occupies a position as a spiritual counsellor or his older brother has already performed military service.

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[19] Article 8, Compulsory Military Service Ordinance 1961.

[20] Country Decree of 10 June 1963 containing general provisions implementing the Compulsory Military Service Ordinance 1961, Official Bulletin 1963, no. 86.

[21] Article 6, Compulsory Military Service Ordinance 1961.

[22] Country Decree of 14 March 1995, no. 23, implementing article 11, paragraph 3 of the Compulsory Military Service Ordinance 1961, Official Bulletin 1995, no. 37.

[23] Article 15, Compulsory Military Service Ordinance 1961.

50. A person liable for military service is excluded from being called up[24] if he:

(a) Is in custody or is serving a sentence, for the duration of the sentence imposed on him;

(b) Has been sentenced by a court judgment in Curaçao or elsewhere in the Kingdom to more than six months in prison;

(c) Has been divested by a court judgment of the right to serve in the armed forces.

51. The Minister of General Affairs will grant deferment of basic training:

(a) During higher education;

(b) In specific social or economic circumstances;

(c) If deferment would serve the public interest;

(d) In special cases other than the above.

52. Deferment lapses as soon as the reason for it no longer exists.

53. It is possible for those who are registered for compulsory military service to enter into a voluntary engagement with the armed forces of the Kingdom. In such a case the individual is in the service of the Kingdom.[25]

*Training in Curaçao*

54. Basic training lasts a maximum of 12 months.[26] During his time in service, a conscript acquires the competences required for the job he holds or is intended to hold. This is done in accordance with conditions laid down by the Regional Commander-in-Chief, who is designated admiral for the Caribbean parts of the Kingdom by the Minister of Defence.

## B. Recruitment of voluntarily serving personnel

**The Netherlands**

55. The present recruitment processes start with direct and indirect communication with the labour market. Since the armed forces consist solely of volunteers it is important to attract jobseekers. Labour market communication therefore plays a crucial role in generating interest and helping to increase awareness and promote the image of the Defence organization. This communication is also directed towards the Dutch public, particularly towards influential parties such as parents, partners and careers advisers, who play an important role in decisions on whether to apply to join the Defence organization. The civilian courses are advertised by the ROCs themselves, since their target group is interested in a course and not yet in a job. However, The Ministry of Defence does assist with communication at the request of the ROCs. Almost all information is provided online through the following websites:

www.defensie.nl,
www.werkenbijdemarine.nl,
www.werkenbijdelandmacht.nl,

[24] Article 21, Compulsory Military Service Ordinance 1961.
[25] Section 1, Netherlands Antilles and Aruba Defence Act.
[26] Article 27, Compulsory Military Service Ordinance 1961.

www.werkenbijdeluchtmacht.nl, and
www.werkenbijdemarechaussee.nl.

56. The Defence organization is faced with manpower shortages in various specialised fields in which it has to compete in the labour market as a potential employer. To compete effectively it can, where necessary, use various incentives to maximise its appeal, for example offering to pay enlistment bonuses, reimburse the costs of past training courses or meet the costs of obtaining a driving licence. Such incentives are used only for categories of personnel in short supply, such as those with technical or medical training.

57. Besides general recruitment measures, the Ministry of Defence also ensures that potential applicants receive information on a face-to-face basis at least once. The purpose of providing information in person is to give the target audience a realistic picture of the course they wish to follow and what it is like to work for Defence and to enthuse and inform them in such a way that they actually apply.

58. Those interested in a job with the Defence organization can make an appointment online or by telephone to attend an information meeting in their region. The meetings are designed above all to give those present a better idea of what being a member of the armed forces actually entails. Ensuring that recruits have a realistic picture of military life is also why the Ministry of Defence uses the intake procedure through the civilian training institutions (ROCs). This helps to reduce the number of people who join the armed forces and later seek a discharge out of disillusionment with military life. During the meetings specific information is provided about the job, the terms and conditions of employment and working conditions as well as about the examination and selection procedure. Those attending also have an opportunity to become acquainted in person with the organisation and the people who work in it. The information meetings are held at schools, events, regional military and civilian information centres, the offices of the public employment service of the Employee Insurance Agency and the recruitment offices of the branches of the armed forces, in short wherever people come together.

59. The NGOs recommend that both these information meetings and the ROC courses should deal with the issue of child soldiers and with the Optional Protocol and its provisions in relation to the armed forces.

60. Once the interest of potential candidates has been aroused, they can apply for a job with the Defence organization. If the candidates have shown by submitting the necessary documentary evidence such as certificates and a Dutch passport/proof of identity that they fulfil the enlistment criteria (age, Dutch nationality, qualifications and so forth) they can be invited to take part in a psychological test as part of the selection procedure.

**(a) Psychological selection**

61. A psychological selection procedure starts once candidates have applied. After a preliminary administrative selection stage, applicants are passed on to the Psychological Examination and Selection Service Centre for psychological testing. However, those applying for a job as pilot, loadmaster, flight engineer, air traffic controller or air operations controller can take the test at the Aviation Medical Centre. The psychological examination consists of capacity tests, personality questionnaires and an interview. The psychological selection procedure for applicants who have successfully completed the vocational course on security and skills ("Veiligheid en Vakmanschap") at the ROCs is rather more limited as they have already gained experience of the Defence organization through their practical training.

**(b) Medical examination**

62. Once applicants have passed the psychological examination, they are referred to the Medical Examination Service Centre for a pre-enlistment medical examination. This examination consists of two parts, namely health screening and an exercise stress test. The exercise stress test measures maximum exertion levels and physical fitness and includes a forecast of suitability for future military duties. Students who have applied to the armed forces through the ROCs ("Veiligheid en Vakmanschap" course) are not required to undergo the exercise stress test since sport is one of the subjects taught on the course, and students have therefore already complied with all the requirements of the stress test. If a student has obtained a pass in this subject, the doctor carrying out the medical examination may decide not to perform the exercise stress test and treat a satisfactory result at the ROC as equivalent. However, students themselves may indicate whether they wish to use the results of this subject or instead submit to the exercise stress test during the medical examination.

63. If anything unusual is revealed by the health screening or exercise stress test the applicant may be referred to the Central Military Hospital for an expert opinion.

64. The data from the health screening and exercise stress test are submitted together with the opinion of the Medical Examination Service Centre to the medical officers of the Safety, Health and Welfare Service (CDC/BGGZ/AD), who discuss the data with the candidate and determine the outcome, preferably on the same day.

65. The outcome of the examination is either 'suitable' or 'unsuitable'. The outcome may be deferred for administrative reasons, for example if further data must be obtained from the family doctor or if an expert opinion must be obtained from the Central Military Hospital. In the case of Defence the outcome of the medical examination may also be 'temporarily unsuitable'. This is an outcome which is not used in the case of civilian organisations.

66. Nor may any ranking be mentioned, even as regards the outcome of the exercise stress test. Applicants either meet or do not meet the requirements, and no other information may be divulged, for example where someone scores much higher than the required level.

**(c) Security screening**

67. Applicants must also undergo vetting as referred to in the Security Screening Act.[27] This is designed to assess by reference to criminal justice data and court records whether there are sufficient guarantees that the applicants will faithfully discharge their confidential military duties in all circumstances. Only then will a 'declaration of no objection' be issued, without which no enlistment is possible.

68. If all the steps have been successfully completed, the candidate can be enlisted as a member of the armed forces.

**(d) Training**

69. As described above, candidates who have not reached the age of 18 on the date they join the armed forces are enlisted as military trainees rather than as members of the armed forces. During training a military trainee is supervised by an experienced non-commissioned officer. Trainees may obtain an immediate discharge from the course if they find that service life is different from what they had envisaged. Their time in training until

[27] Bulletin of Acts and Decrees 1996, 525; Parliamentary Papers 24023.

they reach their 18th birthday counts as a probationary period. In this period they are not eligible for deployment or armed service. Only during practice on a shooting range do they use live ammunition. Once military trainees have completed their training, they are not assigned to a job until they have reached the age of 18. But before being enlisted as a member of the armed forces the 18-year-old trainee must give written consent.

70. The following table shows how many military trainees leave the service before reaching the age of 18 (breakdown by sex and branch of service).

| | *Royal NL Army* | | *Royal NL Air Force* | | *Royal N[1], Navy* | | *Royal NL Constabulary* | | *Total* | |
|---|---|---|---|---|---|---|---|---|---|---|
| | *M* | *F* | *M* | *F* | *M* | *F* | *M* | *F* | *M* | *F* |
| 2009 | 93 | 10 | 0 | 0 | 49 | 1 | 3 | 1 | 145 | 12 |
| 2010 | 83 | 9 | 2 | 0 | 20 | 4 | 3 | 0 | 108 | 13 |
| 2011 | 35 | 1 | 0 | 0 | 11 | 1 | 0 | 0 | 46 | 2 |
| **Total** | **211** | **20** | **2** | **0** | **80** | **6** | **6** | **1** | 299 | 27 |

### (e) Application of military criminal law

71. Under article 60 of the Military Criminal Code, military personnel are defined as people whose voluntary enlistment with the armed forces means that they have an obligation to be on active duty continuously throughout the term of their engagement. On the basis of this definition military trainees come within the scope of the Military Criminal Code. They are accordingly subject not only to Dutch criminal law but also to the application of the Military Criminal Code, the Military Disciplinary Law Act and the Administration of Military Criminal Justice Act. On the basis of articles 1 and 6 of the Military Criminal Code the courts will apply the special provisions for minors from the civilian Criminal Code where appropriate.

72. The special position of military trainees is recognised not only in the substantive provisions of military law but also in the procedural provisions. For example, article 39 of the Military Criminal Code provides that a large number of provisions of the Code of Criminal Procedure concerning criminal proceedings against young people are applicable by analogy in military cases involving minors (i.e. people who have not reached the age of 18 at the time of the commission of the offence). In this way justice is also done to the special position of military trainees in criminal proceedings before the military chamber of an ordinary court. The trial of military trainees is therefore completely in accordance with the Convention on the Rights of the Child. It should once again be emphasised that military trainees cannot commit specifically 'military offences' since they are not assigned to a specific job and may not therefore perform duties as a member of the armed services. However, military criminal law also includes ordinary criminal offences, for example motoring offences.

### (f) Application of military disciplinary law

73. As regards the relationship between military disciplinary law and the Convention on the Rights of the Child, it should be noted that the Military Disciplinary Law Act sets out and defines a number of rules of conduct. It also contains rules on how disciplinary proceedings must be conducted and what sanctions may be imposed on a member of the armed forces. The sanctions under military disciplinary law must be such that they do not conflict with the Convention on the Rights of the Child.

# III. Prohibitions and related matters

## Articles 1, 2 and 4, paragraphs 1 and 2

74. In the Kingdom of The Netherlands the state has a monopoly on the use of force and the establishment of private armed groups is prohibited. It follows that an assessment of whether the provisions of the Optional Protocol have been complied with can be confined in the case of the Kingdom of the Netherlands to the Dutch armed forces, in other words an assessment by reference to article 3.

### The Netherlands

75. Establishing or joining private military and security companies for the purpose of taking part in armed conflicts is in the Netherlands prohibited under the Militias Act.[28] A militia is defined as any organisation of private individuals which is intended or prepared as a group to perform or participate in activities that come within the remit of the armed forces or police in maintaining and enforcing external and internal security and public order. An infringement of the Militias Act is an indictable offence carrying a one-year term of imprisonment or a fourth category fine. There are also far-reaching limitations on any private security organisations in the Netherlands under the Firearms, Ammunition and Offensive Weapons Act and the Private Security Organisations and Detective Agencies Act. This is one reason why such organisations would never be deployed in an armed conflict.

76. Moreover, recruiting volunteers to serve in the armed forces of a foreign state or to take part in an armed conflict is an offence under article 205 of the Criminal Code and carries a term of imprisonment not exceeding four years or a fifth category fine. If the armed conflict for which the person is recruited involves committing a terrorist crime the term of imprisonment is increased by one third. In the Netherlands recruitment is therefore permissible only by and for the Dutch armed forces.

### Aruba

77. Aruban criminal law does not include any specific provisions making it a criminal offence to make persons younger than 18 take part in hostilities or to force them to serve or enlist in the armed forces. This is because it is impossible in any case in Aruba for persons younger than 18 to join the armed forces. The Aruban Criminal Code does however define a number of criminal offences involving making a person perform acts by force or against their will, in some cases with a view to exploitation or financial gain.

78. Aruba also has a provision comparable to article 205 of the Dutch Criminal Code, except that the corresponding article (211) of the Aruban Criminal Code currently makes it a criminal offence, carrying a maximum penalty of a year in prison, only to recruit a person, without permission from the Governor of Aruba, for service in the armed forces of a foreign country (and not for 'armed conflict', as in the Dutch Criminal Code). However, recruiting a person for armed conflict has been included as a criminal offence in the draft version of the new Aruban Criminal Code, which is currently under consideration by the Aruban parliament. This offence would carry a maximum term of imprisonment of four years. It is not yet known when the new Criminal Code will enter into force.

[28] Bulletin of Acts and Decrees 1936, 206.

*International agreements*

79. The following international agreements are in force for Aruba:

(a) Additional Protocols I and II (1977) to the 1949 Geneva Conventions, both entered into force for Aruba on 26 December 1987;

(b) The Rome Statute of the International Criminal Court (1998), entered into force for Aruba on 1 July 2002;

(c) International Labour Organization Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, entered into force for Aruba on 22 June 2011.

**Curaçao**

80. The maintenance of the independence and the defence of the Kingdom are Kingdom affairs. Residents of Curaçao may only be ordered to serve in the armed forces or to perform civilian service pursuant to country ordinance.[29] It is therefore not permitted to raise armed units other than the armed forces of the Kingdom.

81. Pursuant to the Country Ordinance of 17 December 1997 containing rules on militias ('Militias Ordinance 1997'),[30] it is forbidden to raise, participate in or support militias, the reason being that organisations that are concerned with the voluntary exercise of military skills and which have no connection with organisations under democratic scrutiny are capable of disturbing the constitutional balance between the legislative, judicial and executive powers.

82. A militia is defined as any organisation of private individuals[31] which is designed to or prepares to perform or participate in concert in acts aiding or assisting the minister or regional commander-in-chief or officials designated by them. Contravention of the Militias Ordinance 1997 is regarded as an indictable offence and is punishable by a term of imprisonment not exceeding two years or a fine not exceeding 60,000 Caribbean guilders.

83. However, the ban on raising a militia does not apply to organisations permitted under a country decree containing general provisions.[32] This covers the Curaçao Volunteer Defence Force (VKC), which was established by country decree.[33]

84. The minimum age for registration as a prospective member of the VKC is 18 years. All prospective members must be Dutch nationals. Their personal details are checked by a preliminary investigation by the VKC's internal affairs division. The admission procedure also includes a medical examination, a fitness test and a home visit. Lastly, every prospective member of the VKC is screened by the Curaçao Security Service before beginning eight months in training.

85. Under the Criminal Code of Curaçao it is a criminal offence to recruit anyone for service in the armed forces of a foreign country without the permission of the Governor-General.

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29 Article 94, paragraph 1, Constitution of Curaçao.

30 Article 2, paragraph 1, Militias Ordinance 1997, Official Bulletin 1997, no. 335.

31 Article 1 (c), Militias Ordinance 1997.

32 Article 2, paragraph 2, Militias Ordinance 1997.

33 Country decree containing general provisions of 24 April 1998 permitting the Curaçao Volunteer Defence Force to exist as a militia within the meaning of the Militias Ordinance 1997, Official Bulletin 1998, no. 68.

# IV. Protection, recovery and reintegration

## Article 6, paragraph 3

### Child soldiers and article 1F of the Refugee Convention

86. One of the checks made in connection with asylum applications is whether the applicant has himself committed crimes, including breaches of the Optional Protocol, and whether he has himself been guilty, possibly as a child soldier, of one of the crimes referred to below. Pursuant to article 1F of the Refugee Convention the provisions of the Convention are not applicable to a person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

87. To determine whether applicants for asylum should be held individually responsible for acts covered by article 1F, the authorities must ascertain whether it can be assumed that they knew or should have known of the commission of the crime or crimes concerned ('knowing participation') and whether at any time they took part in such crimes personally ('personal participation'). If this is the case, article 1F can be invoked against the person concerned. For this purpose, the 'personal and knowing participation test' is applied (see articles 25 and 27 to 33 of the Rome Statute of the International Criminal Court).

88. Where asylum applicants may possibly have served as child soldiers in their country of origin, efforts are focused on determining whether they participated knowingly in any crimes. The basic principle is that special account should be taken of their age. Child soldiers under the age of 15 are not held responsible for acts as referred to in article 1F. Consequently, article 1F is not applied to them. This principle applies to all acts of child soldiers under the age of 15, regardless of whether or not the acts were performed while on service. In the case of child soldiers aged between 15 and 18, all facts and circumstances of the individual case should be taken into account. These facts and circumstances include:

(a) The age of the applicant at the time of joining the armed group;

(b) Whether or not the applicant joined voluntarily;

(c) The consequences of refusal to join;

(d) Circumstances that could have rendered the applicant incapable of making an informed decision;

(e) The length of time spent as a child soldier;

(f) Whether it would have been possible to escape (or escape earlier) and/or not participate personally in the commission of crimes;

(g) The forced use of drugs or medication; and

(h) Promotion within the ranks for 'good performance'.

# V. International assistance and cooperation

## Article 7, paragraph 1

### 1. Child soldiers and international operations

89. As regards the issue of Dutch command of foreign forces that do employ child soldiers it should be noted that Dutch military personnel can be deployed in various international contexts, for example through the United Nations, NATO or the EU. Where it appears that the Netherlands will be in command of troops that may possibly include soldiers under the age of 18, this matter will be taken up with the countries concerned. The Dutch commander will point out that in view of its obligations under the Protocol the Netherlands cannot accept a situation in which he has minors under his command.

90. The NGOs believe that this is not sufficient. They argue that the Netherlands and its commanders should take active steps to prevent allies from using soldiers under the age of 18. They also recommend that the pre-deployment training of Dutch military personnel should also promote awareness of the use of child soldiers by possible adversaries and how this should affect their own actions.

### 2. Child soldiers worldwide

91. As regards the position and contribution of the Dutch government in a multilateral and bilateral context it should be noted that the Netherlands has always explicitly opposed the use of child soldiers in every form. The Netherlands subscribed to the Cape Town Principles (1997), the Paris Principles (2007) and the recent UN resolution 1612, all of which condemn in the strongest terms the use of child soldiers and call on the member states to end this abuse. Dutch policy on this subject continues to be dictated by these documents. More generally, the Netherlands supports the work of the UN Special Representatives and considers it important that they should be able to continue to operate independently. This also applies therefore to Ms Coomaraswamy, the UN Secretary-General's Special Representative for Children and Armed Conflict. The Netherlands also has an active policy on the specific issue of the involvement of girls in armed conflict. The Dutch National Action Plan for the implementation of UN resolution 1325 applies to girls as much as to aduit women and explains, among other things, how this problem should be addressed in demobilisation processes.

92. During its presidency of the Council of the EU in 2004 the Netherlands worked to ensure effective implementation of the EU Guidelines on Children and Armed Conflict, which had existed since 2003 and in which relevant EU officials (EU heads of mission, heads of mission of civilian operations and EU military commanders) are called on to report regularly on relevant matters. The Netherlands actively participated in the review of the implementation of these Guidelines in 2010. The UN Secretary-General's Special Representative also took part in this review.

93. The Netherlands co-sponsored UN resolution A/64/L.58 (30 June 2010) on the right to education in emergency situations. The resolution urges parties to armed conflict, among other things, to respect students and refrain from recruiting children. It also calls on states and other relevant actors to ensure the facilitation of early access to education and training for children through the implementation of measures in the context of early recovery initiatives and peacemaking and peacebuilding processes.

94. The Netherlands supported the preparation of UNESCO's 2011 Education for All (EFA) Global Monitoring Report, which focused attention on the negative effects of armed

conflict on children and on successful examples of the reintegration of former child soldiers through education.

95. The Netherlands also supports various organisations, including War Child, ZOA and the Coalition to Stop the Use of Child Soldiers, in arranging for the reception and demobilisation of child soldiers and preventing their recruitment in countries such as Burundi, Uganda and Sri Lanka. For example, through the co-financing system the Netherlands provided financial assistance to War Child of about EUR 1.9 million in 2009 and EUR 1.6 million in 2010. The Netherlands is also one of the largest donors to UNICEF's Child Protection Global Funds (providing USD 24 million between 2006 and 2009). These funds have enabled this organisation to demobilise thousands of child soldiers and reintegrate them into their communities in countries such as Afghanistan, Colombia, Côte d'Ivoire and Sudan. Between 2006 and 2010 the Netherlands gave USD 201 million to UNICEF's Education in Emergencies and Post-Crisis Transitions Programme, from which former child soldiers and others receive education and training. In 2010, the Netherlands supported UNICEF initiatives to improve access to quality schooling in Afghanistan, the Central African Republic, Colombia, Côte d'Ivoire, Democratic Republic of the Congo, Iraq, Myanmar, Nepal, Sudan, the Palestinian Territories, Pakistan, the Philippines, Somalia, Sri Lanka and Uganda, for example by accelerated teaching programmes, peace education and psychosocial training. The Netherlands has also collaborated with Save the Children in Uganda, Côte d'Ivoire, South Sudan and the Democratic Republic of the Congo to provide quality schooling for larger numbers of children. In August 2011 the Netherlands made a contribution of EUR 250,000 to the International Criminal Court's Trust Fund for Victims. This fund also supports the rehabilitation of former child soldiers.

96. Finally, mention should be made of World Bank's Multi-Country Demobilisation and Reintegration Programme (MDRP) to support the disarmament and demobilisation of ex-combatants in the Great Lakes region of Central Africa. The Netherlands is one of the largest donors to this programme, which has demobilised thousands of child soldiers in countries such as the Democratic Republic of the Congo, Burundi, Rwanda and Uganda. Lastly, it should be noted that the Kingdom of the Netherlands is not mentioned explicitly in reports of the Secretary-General to the Security Council in accordance with resolution 1612.

# VI. Other statutory measures

## Article 5

97. The Netherlands is a party to the most relevant international humanitarian law and human rights instruments that may be taken into account in applying the Optional Protocol. These include the four Geneva Conventions of 12 August 1949 and their three Additional Protocols of 1977 and 2005. Other relevant instruments are the International Covenant on Civil and Political Rights of 1966 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. As noted above, the Netherlands subscribed to the Cape Town Principles, the Paris Principles and UN Security Council resolution 1612.